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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,166	08/05/2003	Julian Crawford	035470.00001	6335

7590 10/13/2005

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EXAMINER

BRUENJES, CHRISTOPHER P

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 10/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/634,166

Applicant(s)

CRAWFORD, JULIAN

Examiner

Christopher P. Bruenjes

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1772

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection:

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see continuation sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 8-15.
Claim(s) withdrawn from consideration: 1-7,16-19.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____

ADVISORY ACTION

Acknowledgement of Applicant's Amendments

1. Applicant's amendments filed September 29, 2005, have not been entered due to the fact that they raise new issues that would require further consideration and/or search. In response to Applicant's argument that the amendment does not constitute a new issue, since the claimed structure is the structure of the invention as argued in the response to the first Office Action, the rejections are formulated in response to the broadest reasonable interpretation of the claims as presented and not based on arguments that present limitations that are not in the claims. Specifically, Applicant has stated that "drawn" is described in the specification has a yarn that is treated by stretching and heating to fix the yarn with desired elongation characteristics. However, this definition presented in the arguments to the first Office Action is a narrower definition than can be reasonably determined in light of the specification. There is no specific definition of drawn presented in the specification and the closest explanation of the term claimed is presented on page of 5 of the instant specification, in which it is stated that the yarn is drawn by passing the yarn through rollers to stretch the yarn. The drawn yarn is then passed

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through an oven to heat set the yarn. Although the preferred embodiment of the invention includes yarns that are drawn and heat set, the specification provides a distinction between a drawn yarn and a drawn and heat set yarn, by stating that the drawn yarn, meaning that the yarn is already considered "drawn", is passed through an oven to heat set the yarn, therefore, limiting the elongation characteristics. Therefore, the limitation "drawn" does not require the filament to be heat set or to have a limited elongation capability. Thus, the new limitation that the longitudinally extending thermoplastic filaments are heat set is an issue that has not been previously considered. Likewise, the term "elastic" is not specifically defined in the specification and therefore is given its broadest reasonable interpretation. In this case, the broadest reasonable interpretation in light of the specification of "elastic" is the dictionary definition, which is a material that can be stretched and will resume its previous shape or size, which is much broader than the narrow interpretation used by the applicant that elastic requires the yarns to receive no treatment setting. The definition only requires that the material have some degree of flexibility with regard to stretching and resuming original shape. The broadest reasonable interpretation does not require that the elongation capabilities

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of the elastic filament be greater than the elongation capabilities of the longitudinal filaments. Therefore, that limitation is a new issue that was not explicitly or implicitly presented in the claims previous to this amendment. Because new consideration and/or search will be required to address the new issues presented by the amendments filed in the after final amendment filed September 29, 2005, the amendment will not be entered.

ANSWERS TO APPLICANT'S ARGUMENTS

2. Applicant's arguments have not been considered because they are not commensurate in scope with claims presented prior to this amendment that has not been entered.

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the

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organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher P Bruenjes


Examiner

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CPB

CPB

October 5, 2005


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772 10/6/05